

***THE LAST DJ?:
FINDING A VOICE ON MEDIA OWNERSHIP***

**REMARKS BY
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**THE FUTURE OF MUSIC COALITION POLICY SUMMIT 2003
GEORGETOWN UNIVERSITY, WASHINGTON, DC
JANUARY 6, 2003**

Thank you for that warm welcome. And thank you to Lester Chambers and his band for the opportunity to play with you. You took a real chance letting an FCC Commissioner play with you – I certainly would have been skeptical – and I appreciate your letting me sit in. At what other federal agency besides the Federal Communications Commission could a guy like me get the chance to play with a legend like Lester Chambers and call it part of my job description?

This is my first speech since I joined the Federal Communications Commission last month. I am thrilled to be with you. The FCC has a lot to do with the future of music, and I care a lot about music and musicians. One of the things that makes me so proud about this country is our musical heritage. It has enriched the entire world, and it has certainly enriched my life.

Musicians face big challenges in this age of new technologies and media consolidation. I know it is tough to make it as a musician. That is why I plan to keep my day job. I am not sure that I am the first FCC Commissioner who plays rock n' roll, but I hope I am not the last.

Today, I want to encourage other musicians, and every artist, to make your voices heard to your Government and especially at the FCC. As I will discuss, the FCC is about to make some major decisions that will affect all of our lives. Those decisions will most directly affect people, including some of you here today, whose music, programs, and movies are carried over the airwaves. Our whole country will fare better if musicians and other artists are heard in these debates.

The Challenge of New Technologies

You well know how the technological advances of the last decade have changed our lives. You live with them everyday. You know the enormous potential of these technologies – such as broadband, wi-fi, satellite radio, and digital cable – to bring your creative message to millions of people all over the world. And we have heard your concern that corporate or government restrictions may limit artists' ability to distribute their products and to receive fair compensation for their use.

The Government needs to address these issues. For example, our copyright laws are designed to balance the rights of artists with the rights of their audience – the American people. In order to ensure that lawmakers achieve the right balance, it is critical that artists like yourselves become involved in the policy battles here in Washington.

While the FCC does not enforce the copyright laws, the industries we oversee play a key role in the distribution of copyrighted material – including music, movies, and television programming. As this material becomes available digitally, it becomes easier to distribute. As a result, the material is more accessible to more people, which is a good thing. But the downside is that it becomes more vulnerable to theft.

The FCC has begun a proceeding about how to protect digital broadcast content. We have received over 5600 comments from interested parties. We are considering whether to require manufacturers to incorporate copy protection technology in digital TV sets. Broadcasters could then embed a digital “flag” in transmissions designating content to be protected.

The Challenge of Media Ownership

Another mighty challenge before us is how we approach the rules governing media ownership in this country. Last fall, the FCC opened a broad review of all of its media ownership rules. The review is mandated by Congress and has been spurred by a number of Court decisions questioning our current rules. So, as Lester Chambers just sang, “people get ready.”

The FCC is charged with protecting what the Supreme Court referred to as an “uninhibited marketplace of ideas.” Let me read from that seminal First Amendment decision: “It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or by the FCC.”¹ Thus, the Supreme Court of the United States itself has said that the FCC may not abridge the right of Americans to have access to ideas and to creativity.

By law, the FCC grants and renews broadcast station licenses in the public interest. In practice, that means we must promote competition, diversity, and localism so that the marketplace of ideas can flourish. A great thing about my new job is that I am passionate about this mission, and it is my sworn duty to carry it out.

It is the FCC’s job to protect the free flow of ideas, of creativity without strictures. This obligation means not only that the FCC should not impose restrictions, but also that we should refrain from actions that have the effect of impeding the exchange of diverse viewpoints. We need to ensure that we do not allow the structure of the industries that distribute ideas and

¹ *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).

creative products to limit the voices that can be heard in this country and in each of our communities.

Whether or not most Americans even know that they exist, the rules we are now reviewing have shaped the media landscape as we know it. They are designed to prevent individual companies from gaining too much control over what we see, hear, and read.

The rules make it difficult for one company to own both a newspaper and a television or radio station serving the same community. They cap the number of TV or radio stations that one owner can control in a single area. They prevent a network from owning TV stations that reach more than 35 percent of the national audience. They prevent companies from owning more than one of the four major TV broadcast networks. And they limit the number cable systems one company may own nationwide.

Any changes that the FCC makes to its media ownership rules could massively and irreversibly change the media landscape. These changes will affect all of us as viewers and listeners. The FCC must proceed very cautiously, because if we permit further media consolidation and it turns out to be a mistake, we will find it difficult, if not impossible, to put the toothpaste back in the tube.

So we at the FCC are working hard to build a solid record to help us determine what ownership rules will best serve the public interest. The DC Circuit Court of Appeals has demanded that the FCC do a better job of justifying ownership rules with hard evidence. In response, the FCC recently conducted a series of studies on the media markets. The goal was to begin gathering data about how media markets work and how consumers use the media. These studies are posted on the FCC's web site if you want to review them. They represent a good faith effort to begin the process of determining the facts we must know in setting these rules. And we have received a huge volume of comments in response to them that we are only now beginning to evaluate. Some of these studies relate to the radio industry, and I would like to focus on those findings.

First, consider the recent history of the radio business in this country. Congress – not the FCC – enacted legislative changes in 1996 that led to a dramatic restructuring of the U.S. radio market. The 1996 Telecommunications Act loosened radio ownership rules, prompting an unprecedented wave of consolidation in the radio industry. Many of you have felt the effects.

The 1996 Act entirely eliminated a cap on the number of radio stations a single company can own nationwide. It also relaxed local ownership limits, permitting a single owner to control up to eight stations in the nations' largest markets. As one might have predicted, the relaxation of these rules led inevitably to more stations in fewer hands.

In the first year after the Act, more than 2100 of the approximately 11,000 radio stations in the U.S. changed hands. And most of these stations were sold to companies that already owned radio stations – many of them former competitors in exactly the same markets.

According to one FCC report, in the six years since the adoption of the 1996 Act, the number of radio owners in the United States declined by 34 percent, even though the number of commercial radio stations increased by 5.4 percent. The FCC found that this decline is primarily due to mergers between existing owners.

In 1996, the two largest radio group owners consisted of fewer than 65 radio stations. Six years later, the largest radio group owns about 1,200 radio stations. The second largest group owns about 250 stations. Their influence is even larger than their numbers suggest, because they are concentrated in the largest markets in the country. Another outcome is a downward trend in the number of radio station owners in each local market.

The FCC study indicates that group owners account for an increasing share of radio advertising revenues in local markets. For example, last year the largest firm in each radio market had, on average, 47 percent of the market's total radio advertising revenue. The largest two firms in each radio market had, on average, 74 percent of the market's radio advertising revenue.

The Future of Music Coalition has itself put together a truly impressive study on the effects of radio consolidation following the 1996 Act. The report, which each of you should read if you have not already, raises concerns about increasing local radio market concentration and the rise of ever larger national radio groups. It concludes that as a result of these trends, programming on local radio stations is increasingly done at the national level rather than by the local stations.

Now, I understand that some consolidation can be a good thing. In radio, as in other sectors, economies of scale can lead to services that would not otherwise be possible. But consolidation also carries risks, risks that go beyond traditional antitrust analysis. Unlike the Justice Department, the FCC is charged by law with ensuring that media mergers are in the public interest.

One risk of radio consolidation to the public interest is the loss of localism, a core value at the foundation of the American system of broadcasting. Unlike some other countries, we have never awarded nationwide radio licenses. Radio stations are licensed to communities and serve as outlets for local expression, as sources of local news and information and as outlets for local artists like yourselves. Programming that serves the unique needs of local communities by definition varies from community to community.

Consolidation, on the other hand, often leads to the homogenization of programming. We must ask ourselves: at what point does consolidation come at the cost of the local expression that makes radio so unique and so special in this country? At what point does allowing consolidation undermine the public interest – and the quality of what we hear on the radio?

Another risk of consolidation is the loss of a diverse array of voices and viewpoints over our airwaves. One of the FCC's recently released studies examined the diversity of radio formats in local communities. "Radio format" is shorthand for the type of programming a station

plays – whether it’s educational, classic rock, jazz or oldies. The FCC's study suggests that consolidation may not reduce the variety of formats available. Starting with the premise that “program diversity is reflected, at least in part, by the number of distinct radio formats available in each Metro market,” the study concludes that “there generally continues to be no trend toward change in the diversity of radio programming available to consumers.”²

But measuring format diversity may not tell the whole story. The Future of Music study raises questions regarding the usefulness of format as an indicator of programming diversity. Its study found that “formats with different names that would seem to distinguish *different* kinds of programming, actually serve as labels for playlists with many of the *same* songs.”

That finding is not so surprising considering how closely the industry distinguishes formats. For example, Adult Contemporary, Hot Adult Contemporary, and Urban Adult Contemporary are considered three separate formats. But clearly, they will play many of the same artists. Take the number of artists who you hear on different types of radio stations today. Shania Twain, for example, may show up on a top 40 or a country and western station, not to mention any host of adult contemporary formats.

And whether or not we look to format variety as a barometer, a radio owner with multiple formats can still speak with a single voice in expressing ideas and information on those stations. A diversity of viewpoints has always been critical goal of the FCC’s media ownership rules. The FCC has historically achieved it by ensuring that no single company can dominate the public discourse in any given town or nationwide. Viewpoint diversity remains critical, because it is the new ideas, the new content, and the airing of news and public affairs that fuel our culture and that are at the heart of our democracy.

What becomes clear in reading these studies is that we cannot measure the effect of radio consolidation simply by calculating advertising revenues or the number of formats. Ownership consolidation in local markets by definition reduces competition and puts programming decisions into the hands of comparatively fewer, often national, players. Therefore, we must consider how consolidation affects the programming choices available to listeners and the level of local public affairs coverage.

We also must consider how consolidation affects all of you as artists. Years ago, as a new artist, you might have gotten your first airplay on your local station – in a town where the DJ heard you at a local club the night before and wanted everyone else to hear you, as well. As national groups buy out more local stations, that town may no longer have a local DJ at all.

It is important for you to realize that the game is not over on this issue. While the 1996 law relaxed the rules, it also required the FCC to review its policies every two years in light of changes in the marketplace like the ones we have discussed. This mandate includes reviewing the local radio caps that Congress set in 1996. In doing so, we need to ask some important

² George Williams and Scott Roberts, *Radio Industry Review 2002: Trends in Ownership, Format, and Finance*, at 7 (Sept. 2002).

questions. How have looser radio caps affected the diversity of music played and viewpoints expressed? What have been the economic consequences? Do the current caps need to be modified to better serve the public interest?

In addition, we must look at the key issue of how we count the radio stations in each market. Simple as that sounds, it has proven anything but simple in practice. Yet the FCC must determine how many stations are in a market in order to set the limits on how many stations one company can own. Because the limits change depending upon how many stations are in the market, the numbers clearly matter a great deal.

For example, take the small town of Yankton, South Dakota, in my home state. The way the FCC set up its market definition, it considers Yankton one of the largest markets in the country. That means that one owner can control eight radio stations in town – but there are not even eight stations in Yankton! So one person can own them all! Clearly, there is something wrong with how the FCC currently draws market boundaries. This issue is pending before us right now.

But, as I mentioned, radio is just one of the many media outlets to which the FCC is paying attention. Congress's relaxation of the rules on radio consolidation has been the canary in the mine, testing whether it is safe to go in before miners dare to enter. The miners in this case are all of the consumers affected by FCC rules that govern ownership of television, radio, cable, and newspapers. The FCC better carefully consider the health of that canary before we proceed further, because changes to the FCC's media ownership rules potentially could alter the media landscape as much or more than the 1996 actions by Congress changed the radio industry. And, as you will hear from Senator Feingold and Congressman Berman, Congress is reconsidering the radio rules as well, with a view toward whether Congress should revisit the changes it made in the 1996 Act.

What You Can Do

So, after listening to the speakers that will be participating in the rest of this conference, you may wonder: what can I do? Good question.

Your participation is a critical part of FCC decision-making. The process depends on it, but, more importantly, the outcome depends on it. There is no way that we – the five members of the Commission – can fully understand the impact that our decisions will have on different constituencies without hearing from them. If we are to craft media ownership rules that best serve the public interest, we must hear from the public, including you and your colleagues in the music business.

Musicians know how to use a PA system to be heard in a large club or concert hall. There's nothing we musicians like to do more than amplify ourselves. And when we do, we make a beautiful sound. The Future of Music Coalition is certainly doing an excellent job of getting its message across with its powerful study and advocacy efforts.

In order to ensure that there continues to be a range of voices heard over the airwaves and through all of the media, we need to continue to hear your voices loud and clear before the FCC and throughout the Government. So turn it up!

Thank you.